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Kraig Kazda

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I. INTRODUCTION

An identifiable injury serves as the essential prerequisite to any award of workers' compensation. Without such an injury, the claimant may not receive workers' compensation benefits regardless of the circumstances. Compensation under the Montana Workers' Compensation Act (the Act) also depends on fulfillment of the definitional requirements of an identifiable injury as set forth by the Act.[1] This statutory definition of injury has not remained static over time but has been revised by the legislature on several occasions, most recently in 1987.

In order to understand the latest definition of injury, one must first understand the past statutory definitions of injury and how these varying definitions have been interpreted by the Montana Supreme Court. This comment traces the development of the definition of injury under the Workers' Compensation Act beginning with the first definition of injury in 1915 and culminating with the latest definition of injury effective July 1, 1987. It then analyzes the 1987 definition of injury and discusses the effects and implications of this new definition. Finally, it discusses the relationship between the 1987 definition of injury under the Workers' Compensation Act and the 1987 definition of occupational disease under the Occupational Disease Act.

II. DEFINITIONAL HISTORY OF INJURY UNDER THE WORKERS' COMPENSATION ACT

The Montana Legislature adopted the first definition of injury

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1. MONT. CODE ANN. § 39-71-119 (1987) states:
(1) "Injury" or "injured" means:
(a) internal or external physical harm to the body;
(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
(c) death.
(2) An injury is caused by an accident. An accident is:
(a) an unexpected traumatic incident or unusual strain;
(b) identifiable by time and place of occurrence;
(c) identifiable by member or part of the body affected; and
(d) caused by a specific event on a single day or during a single work shift.

in 1915.[2] This initial definition, which remained unchanged until 1961, provided that " '[i]njury' or 'injured' refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease."[3] Under this definition, the claimant only needed to establish that the injury arose from a fortuitous event.[4]In 1927, the Montana Supreme Court defined a "fortuitous event" as a chance happening or accident " 'occurring unexpectedly or without known cause'. . . and therefore . . . [the event] is synonymous with 'industrial accident.' "[5] Under this definition, if either the *cause* or the *effect* was unexpected, a fortuitous event had occurred.[6] For example, in *Rathbun v. Taber Tank Line, Inc.*,[7] the Montana Supreme Court held that a heart attack suffered by a truck driver during a particularly stressful road trip was an unexpected result which constituted a fortuitous event, and thus a compensable injury.[8] The court stated:

> It is enough, then, if there is an unexpected *result*, even though there was no unexpected *cause*, such as a slip, fall or misstep, in order to constitute an "accident" within the meaning of the Workmen's Compensation Law . . . . It is the unexpected and unintentional effect of the strain or exertion that is covered by the Workmen's Compensation Law as an injury "by accident," and a literal showing of an "accident" such as a slip, fall or misstep is *not* a prerequisite to recovery.[9]

In *Murphy v. Anaconda*,[10] the Montana Supreme Court again held that an unexpected result was sufficient to establish a compensable injury. In *Murphy*, the claimant died from a pulmonary embolism while working within the course and scope of his employment.[11] Yet, the attack in *Murphy*, unlike that in *Rathbun*, resulted from the claimant's performance of his normal duties; no unusual strain

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2. 1915 MONT. LAWS 96 § 6 (eventually codified at Revised Codes of Montana § 2870 (1921) [hereinafter R.C.M.]) (currently codified at MONT. CODE ANN. § 39-71-119 (1987)).

3. *See supra* note 2.

4. *See, e.g.*, Murphy v. Anaconda, 133 Mont. 198, 206, 321 P.2d 1094, 1099 (1958); Rathbun v. Taber Tank Line, Inc., 129 Mont. 121, 127, 283 P.2d 966, 969 (1955); Nicholson v. Roundup Coal Mining Co., 79 Mont. 358, 374, 257 P. 270, 274 (1927).

5. *Nicholson*, 79 Mont. at 374, 257 P. at 274 (quoting in part from WEBSTER'S NEW INTERNATIONAL DICTIONARY).

6. *Murphy*, 133 Mont. at 207, 321 P.2d at 1099.

7. 129 Mont. 121, 283 P.2d 966 (1955).

8. *Id.* at 133, 283 P.2d at 972.

9. *Id.* at 131, 283 P.2d at 971 (quoting Gray v. Employers Mut. Liberty Ins. Co., 64 So. 2d 650, 651-52 (Fla. 1952) (emphasis in the original)).

10. 133 Mont. 198, 321 P.2d 1094 (1958).

11. *Id.* at 205, 321 P.2d at 1098.

or stress preceded his attack.[12] The Montana Supreme Court, however, held that an unexpected result received in the ordinary course and scope of employment, even absent any unusual strain, constituted a compensable injury under the Act.[13]

Following *Rathbun* and *Murphy*, the 1961 legislature amended the definition of compensable injury to specifically prevent compensation for injuries received within the normal scope of employment and without an unexpected cause. The definition of injury, as amended, read in pertinent part as follows: " 'Injury' or 'injured' means a tangible happening of a traumatic nature from an *unexpected cause* resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury."[14] This definitional change from "fortuitous event" to "a tangible happening of a traumatic nature from an *unexpected cause*"[15] prevented compensation for unexpected results. Subsequently, the Montana Supreme Court began denying compensation to workers with injuries associated with an unexpected result but not an unexpected cause.[16] In 1964, the Montana Supreme Court heard *Lupien v. Montana Record Publishing Co.*,[17] the first case interpreting this new definition of injury. Lupien, much like the claimant in *Rathbun*, suffered a heart attack during the course and scope of his employment.[18] The court, however, denied workers' compensation benefits to Lupien since his injury involved an unexpected result but not an unexpected cause.[19] The Montana Supreme Court reached the same decision a year later in *James v. VKV Lumber Co.*[20] In *James*, a lumber stacker injured his back as he bent over to pick up a ten to fifteen pound block of wood.[21] The Montana Supreme Court held that his back injury was not compensable under the Act because the cause of the injury, the lifting of the wood, was a routinely expected part of his job and thus not a "tangible happening of a traumatic nature from an unexpected cause."[22]

In 1967, the legislature again amended the definition of injury

12. *Id.* at 201-02, 321 P.2d at 1096.
13. *Id.* at 211, 321 P.2d at 1101.
14. 1961 Mont. Laws 162, § 6 *amending* R.C.M. § 92-418 (1947) (emphasis added).
15. 1961 Mont. Laws 162, § 6 *amending* R.C.M. § 92-418 (1947) (emphasis added).
16. *See, e.g.*, James v. VKV Lumber Co., 145 Mont. 466, 401 P.2d 282 (1965); Lupien v. Montana Record Publishing Co., 143 Mont. 415, 390 P.2d 455 (1964).
17. 143 Mont. 415, 390 P.2d 455 (1964).
18. *Id.* at 416, 390 P.2d at 456.
19. *Id.* at 419-20, 390 P.2d at 458.
20. 145 Mont. 466, 401 P.2d 282 (1965).
21. *Id.* at 467, 401 P.2d at 282.
22. *Id.* at 469, 401 P.2d at 283.

by adding the phrase "or unusual strain."[23] While the change at first glance seems insignificant, the impact was profound. The addition of this phrase abolished the unexpected cause requirement and allowed an unexpected result arising from a work-related strain, to once again become a compensable injury.[24] Consequently, the Montana Supreme Court in *James v. Bair's Cafe*[25] affirmed a judgment awarding compensation to a dishwasher who injured her back while picking up a heavy tray of dishes. The court reasoned that the legislature added the phrase "or unusual strain" to make this type of injury compensable, noting that: "[t]here was no 'unexpected cause' but there was an 'unusual strain'; thus the measure would seem to be the result of a tangible happening of a traumatic nature which results in physical harm, be it a rupture, a strain or a sprain."[26]

In *Robins v. Ogle*,[27] the Montana Supreme Court again held that an unexpected result gave rise to a compensable injury. In *Robins*, the claimant injured her back when she lifted a mop bucket full of water.[28] The Montana Supreme Court, affirmed the lower court's award of benefits, holding that the claimant's act of incorrectly picking up the mop bucket and thereby injuring her back constituted an unusual strain.[29] The court stated:

> "[a] tangible happening of an unexpected nature from an unusual strain qualifies [as an injury], irrespective of whether the strain is "unusual" from the standpoint of cause or effect. While it may be arguable in the instant case whether the strain was unusual from the standpoint of cause, it is clear that the effect here was unusual—herniation of an intervertebral disc resulting from picking up the bucket in the wrong manner and turning to pick up the mop. *An unusual result from a work-related strain qualifies as 'an unusual strain'* . . . ."[30]

While the 1967 definition of injury again allowed for compen-

23. 1967 Mont. Laws 270 § 1 *amending* R.C.M. § 92-418 (1947) (currently codified at MONT. CODE ANN. § 39-71-119 (1987)). The amendment changed the definition of injury as follows: " 'Injury' or 'injured' means a tangible happening of a traumatic nature from an unexpected cause *or unusual strain* resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to the injury." (emphasis added).

24. *See e.g.*, Robins v. Ogle, 157 Mont. 328, 485 P.2d 692 (1971); Jones v. Bair's Cafe, 152 Mont. 13, 445 P.2d 923 (1968).

25. 152 Mont. 13, 445 P.2d 923 (1968).

26. *Id.* at 19, 445 P.2d at 926.

27. 157 Mont. 328, 485 P.2d 692 (1971).

28. *Id.* at 329, 485 P.2d at 693.

29. *Id.* at 332, 485 P.2d at 694.

30. *Id.* at 333, 485 P.2d at 695 (emphasis added).

sation of an injury arising from an unexpected result, the definition did not eliminate the requirement of a "tangible happening of a traumatic nature . . . resulting in either external or internal physical harm."[31] Thus, in *Erhart v. Great Western Sugar Co.*,[32] the Montana Supreme Court denied compensation to a claimant who suffered a mental and physical breakdown allegedly caused by work related mental stress. The court ruled that the claimant failed to demonstrate that the alleged mental stress constituted a "tangible happening of a traumatic nature."[33] Similarly, in *Stamatis v. Bechtel Power Corp.*,[34] the Montana Supreme Court denied compensation benefits to a widow whose husband died of a heart attack after cleaning some light fixtures.[35] The court held that the decedent's physical activities preceding the heart attack were not unusual or strenuous.[36] Consequently, these activities did not constitute "a tangible happening of a traumatic nature . . . resulting in . . . [a] physical harm."[37]

In *Hoehne v. Granite Lumber Co.*,[38] the Montana Supreme Court further concluded that *a series of incidents*, not merely a single incident, could constitute a "tangible happening of a traumatic nature."[39] This inclusion of a "series of incidents," or "repeated traumas,"[40] allowed for compensation of a multitude of injuries previously perceived as non-compensable. For example, in *Hoehne*, the Montana Supreme Court held that bilateral carpal tunnel syndrome, resulting from a series of traumas incurred daily over a two and one-half month period, when picking up and stacking lumber, constituted a compensable injury.[41] Similarly, in *Jones v. St. Regis Paper Co.*,[42] the Montana Supreme Court held that claimant's aggravation of a pre-existing degenerative disc condition by a series of micro traumas amounted to a compensable injury.[43] Finally, in *Wise v. Perkins*,[44] the Montana Supreme Court recognized that thrombophlebitis caused by a series of small traumas

31. *See supra* note 2.
32. 169 Mont. 375, 546 P.2d 1055 (1976).
33. *Id.* at 381, 546 P.2d at 1058.
34. 184 Mont. 64, 601 P.2d 403 (1979).
35. *Id.* at 70, 601 P.2d at 406.
36. *Id.*
37. *Id.* (citing MONT. CODE ANN. § 39-71-119(1) (1979)).
38. 189 Mont. 221, 615 P.2d 863 (1980).
39. *Id.* at 225, 615 P.2d at 865.
40. I B, A. Larson, THE LAW OF WORKMEN'S COMPENSATION § 39.40 (1987).
41. *Hoehne*, 198 Mont. at 225, 615 P.2d at 865.
42. 196 Mont. 138, 639 P.2d 1140 (1981).
43. *Id.* at 149, 639 P.2d 1146.
44. 202 Mont. 157, 656 P.2d 816 (1983).

associated with excessive work hours during a single week period resulted in a compensable injury.[45]

III. The 1987 Definition of Injury: Effects and Implications

The 1987 legislature set out to reverse, by severely restricting the definition of injury, what employers and insurers perceived as the Montana Supreme Court's continual expansion of the definition of injury.[46] The 1987 definition of injury as amended in section 39-71-119 of the Montana Code Annotated provides as follows:

> (1) "Injury" or "injured" means:
> (a) internal or external physical harm to the body;
> (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
> (c) death.
> (2) An injury is caused by an accident. An accident is:
> (a) an unexpected traumatic incident or unusual strain;
> (b) identifiable by time and place of occurrence;
> (c) identifiable by member or part of the body affected; and
> (d) caused by a specific event on a single day or during a single work shift.
> (3) "Injury" or "injured" does not mean a physical or mental condition arising from:
> (a) emotional or mental stress; or
> (b) a nonphysical stimulus or activity.
> (4) "Injury" or "injured" does not include a disease that is not caused by an accident.
> (5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.[47]

Section 39-71-119 of the Montana Code Annotated specifically excludes several types of conditions not previously expressly ex-

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45. *Id.* at 165, 656 P.2d at 820.

46. Debate preceding enactment of the changes reflects this objective:

> From previous testimony, Senator Gage feels case law has been given more credence than statutes concerning the cases being settled in the courts. Senator Gage feels everyone is under the opinion things have been too liberal concerning case law. His concern at this point is to overcome the liberal decisions. There is a need for an ultra-conservative statute in the law to off-set the liberalness of the court cases.

See Hearing on S.B. 315 Before Labor and Employment Relations Subcommittee, 50th Leg. 3-4 (Feb. 18, 1987) (comments of Senator Gage).

47. Mont. Code Ann. § 39-71-119 (1987).

cluded from the definition of injury, thereby expressly altering the pre-1987 injury definition. Subsection three excludes those injuries arising from emotional or mental stress or non-physical stimulus or activity;[48] subsection four excludes diseases not caused by an accident;[49] and subsection five excludes cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by the worker.[50] The definitional changes entailed in subsection two also significantly alter the pre-1987 definition of injury.[51] Under subsection two, an injury must result from an accident, which is a composite of four elements. All elements must be present before an injury is compensable.[52] The first element, that the injury result from an unexpected traumatic incident or unusual strain, is a continuation of the pre-1987 requirement that the injury be the result of "a tangible happening of a traumatic nature from an unexpected cause or unusual strain."[53] To establish a compensable injury, the claimant thus must continue to meet the pre-1987 requirement that a tangible happening of a traumatic nature cause the physical harm.[54]

The second element, that the accident be identifiable by body part affected, simply reemphasizes the existing requirement that the injury consist of either an internal or external physical harm to the body.[55] This element also requires that the claimant specify the actual part of the body affected. The final two elements require a claimant to identify the accident by time and place of occurrence[56] and to prove that a specific event on a single day or during a single work shift caused the injury.[57] By limiting the accident to a specific event identifiable by time and place on a single day or during a single work shift, the Act will no longer cover many workers suffering from injuries generally associated with repeated trauma.[58]

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48. MONT. CODE ANN. § 39-71-119(3) (1987).

49. MONT. CODE ANN. § 39-71-119(4) (1987).

50. MONT. CODE ANN. § 39-71-119(5) (1987). Note, however, that the injuries excluded by subsection five are compensable if the claimant can demonstrate that a work-related accident was the *primary* cause of the physical harm in relation to other factors contributing to the physical harm.

51. MONT. CODE ANN. § 39-71-119(1) (1987) adds little to the pre-1987 definition of injury, and thus the author has omitted any discussion of this subsection.

52. These four elements are not discussed in the order they appear in MONT. CODE ANN. § 39-71-119 (1987).

53. MONT. CODE ANN. § 39-71-119(2)(a) (1987).

54. Hurlbut v. Vollstedt Kerr Co., 167 Mont. 303, 306-07, 538 P.2d 344, 346 (1975).

55. *See* MONT. CODE ANN. § 39-71-119(2)(c) (1987).

56. MONT. CODE ANN. § 39-71-119(2)(b) (1987).

57. MONT. CODE ANN. § 39-71-119(2)(d) (1987).

58. Examples of such conditions include carpal tunnel syndrome (*see, e.g.*, Hoehne v.

Some claimants, however, may still argue that their particular injury, traditionally associated with repeated trauma, resulted instead from a single traumatic incident. This argument will necessarily depend on proving that despite the series of repeated traumas received over time, the claimant was asymptomatic until the incidence of a single event. *Bremer v. Buerkle*[59] provides support for this position. In *Bremer*, the claimant, an autobody repairman exposed to various chemicals for nine years, suddenly developed an allergic reaction (allergic contact dermatitis) to those same chemicals.[60] The claimant successfully argued that his injury resulted from a single exposure that stimulated his immune system and led to the allergic reaction and not from the cumulative impact of the repeated exposures.[61] Similarly, a claimant suffering from carpal tunnel syndrome could successfully argue that he was asymptomatic, despite being exposed to a series of micro traumas traditionally thought to cause carpal tunnel syndrome, until a specific event on a single day triggered the condition.

Alternatively, a claimant could successfully argue that the very last trauma in a series of gradually debilitating traumas was sufficient to meet the specific event requirement. The Montana Supreme Court recognized the validity of this argument in *Love v. Ralph's Food Store, Inc.*[62] In *Love*, the claimant filed a claim for workers' compensation claiming an accidental injury to her lower back that she described as caused "by continuously lifting something heavy."[63] Despite the evidence of a gradual build-up of back pain over an extended period of time, the Montana Supreme Court held that the claimant suffered a compensable injury since she was able to identify *two* specific incidents, each occurring on a single workday or shift, in which she strained her back.[64]

IV. Relationship Between the Workers' Compensation Act and the Occupational Disease Act

Although the 1987 legislature amended the definition of injury under the Workers' Compensation Act to restrict the coverage of repetitive trauma injuries, it broadened the definition of occupa-

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Granite Lumber Co., 189 Mont. 221, 615 P.2d 863 (1980)); herniated disc (*see, e.g.*, Lemoine v. Marksville Indus., Inc., 391 So.2d 528 (La. App. 1981)); and dermatitis (*see, e.g.*, Christopher v. City Grill, 218 Miss. 638, 67 So.2d 694 (1953)).

59. ___ Mont. ___, 727 P.2d 529 (1986).
60. *Id.* at ___, 727 P.2d at 530.
61. *Id.* at ___, 727 P.2d at 532-33.
62. 163 Mont. 234, 516 P.2d 598 (1973).
63. *Id.* at 236, 516 P.2d at 599.
64. *Id.* at 241-43, 516 P.2d at 601-03.

tional disease so that now the Occupational Disease Act provides coverage for such injuries. The amended definition of occupational disease as set forth in Montana Code Annotated section 39-72-102(10) provides as follows:

> "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.[65]

By shifting coverage for repeated trauma injuries from the Workers' Compensation Act to the Occupational Disease Act, employers and insurers will pay less compensation to injured workers. Under the Occupational Disease Act an injured worker is entitled only to benefits for temporary total and permanent total disability.[66] No benefits are payable for partial disability.[67] Additionally, if a non-compensable disease or infirmity causes or aggravates an occupational disease, the benefits payable to the claimant are reduced on a proportionate basis.[68]

The Workers' Compensation Act and the Occupational Disease Act both provide that an injured worker may elect compensation under either Act, but the elected compensation is then the exclusive remedy available to the worker.[69] Injured workers who fail to qualify for coverage under either the Workers' Compensation Act or the Occupational Disease Act, however, may seek compensation from employers under the common law. Such common-law suits against employers should dramatically increase given the restricted definition of injury, and thus coverage under the Workers' Compensation Act.

The success of such common-law suits will depend upon proof that the negligence of the employer proximately caused the injury.[70] Further, the employer can assert any of the traditional common-law defenses, including any alleged contributory negligence by the employee.[71] The burden of proof required of an injured worker

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65. MONT. CODE ANN. § 39-72-102(10) (1987).
66. MONT. CODE ANN. § 39-72-701 (1987).
67. MONT. CODE ANN. § 39-72-703 (1987).
68. MONT. CODE ANN. § 39-72-706 (1987).
69. *See* MONT. CODE ANN. § 39-71-411 (1987); MONT. CODE ANN. § 39-72-305 (1987). *See also* Ridenour v. Equity Supply Co., 204 Mont. 473, 665 P.2d 783 (1983) (holding that claimants may choose to seek compensation under either Act if they meet the requirements of both Acts).
70. Kern v. Payne, 65 Mont. 325, 330-31, 211 P. 767, 769 (1922).
71. *See generally* MONT. R. CIV. P. 8(c); Green v. Hagele, 182 Mont. 155, 595 P.2d 1159

seeking compensation under the common law, however, will not be insurmountable given the legislature's promulgation of the "Montana Safe Place to Work Statute" that requires employers to provide their employees with a safe place to work.[72] Other jurisdictions by statute and common law similarly have required employers to provide employees with a safe place to work. For example, in *Hines v. Continental Baking Co.*,[73] the injured employee first sought workers' compensation for a back injury allegedly incurred while he was jerking a bread cart over a rough spot on the floor.[74] The Industrial Commission denied the claim holding that the employee did not suffer a compensable injury as defined by the Act.[75] The employee then brought a common-law personal injury action, alleging the employer's failure to exercise reasonable care in furnishing a safe place to work. The court of appeals upheld the judgment in favor of the employee. The court found that the employer's failure to exercise reasonable care in furnishing a safe place to work constituted negligence for which the employer was liable, regardless of whether or not the employer had actual knowledge of the defect making the premises unsafe.[76] Similarly, in *Samson v. Southern Bell Telephone and Telegraph Corp.*,[77] the Court of Appeals of Louisiana held that the claimant's mental breakdown precipitated solely by the stress of his employment did not constitute an injury within the meaning of the Louisiana Workmens' Compensation Act.[78] Consequently, the claimant brought suit against his employer under the common law alleging a tortious failure to provide the employee with a safe place to work.[79] The Montana Supreme Court has yet to face a factual situation similar to *Hines* or *Samson*. The court, however, has held that an employee's contributory negligence will not act as an absolute bar to recovery under the common law if the employee has no alterna-

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(1979); Gilleard v. Draine, 159 Mont. 167, 496 P.2d 83 (1972); Dahlin v. Rice Truck Lines, 137 Mont. 430, 352 P.2d 801 (1960).

72. MONT. CODE ANN. § 50-71-201 (1987) provides:

> Every employer shall furnish a place of employment which is safe for employees therein and shall furnish and use and require the use of such safety devices and safeguards and shall adopt and use such practices, means, methods, operations, and processes as are reasonably adequate to render the place of employment safe and shall do every other thing reasonably necessary to protect the life and safety of employees.

73. 334 S.W.2d 140 (Mo. Ct. App. 1960).
74. *Id.* at ____, 334 S.W.2d at 142-43.
75. *Id.* at ____, 334 S.W.2d at 142.
76. *Id.* at ____, 334 S.W.2d at 146-47.
77. 205 So. 2d 496 (La. Ct. App. 1967).
78. *Id.* 205 So. 2d at 500.
79. *Id.* 205 So. 2d at 500-03.

tive, short of discontinuing his employment, but to work in an unsafe environment.[80]

V. CONCLUSION

The 1987 amended definition of injury under the Workers' Compensation Act, to the detriment of injured workers, excludes physical and mental conditions arising from emotional or mental stress or non-physical stimulus or activity from coverage under the Act.[81] Additionally, the amended definition of injury excludes conditions caused not by an accident,[82] but by a cardiovascular, pulmonary, respiratory, or other disease.[83] Further, the new restrictive requirement that an accident result from a specific event on a single day appears to prevent coverage of injuries traditionally resulting from repetitive traumas.

The statute, however, may not be the complete panacea that the legislature intended. At least two arguments remain for including conditions traditionally associated with repeated trauma within the definition of injury. More importantly, the statute, by restricting coverage of a large number of injuries, invites injured workers to pursue personal injury litigation under the common law and the Montana Safe Place to Work statutes, with employers ultimately bearing the enormous expense of such successful common-law suits.

80. Shannon v. Howard S. Wright Construction Corp., 181 Mont. 269, 275, 593 P.2d 438, 441 (1979). This action arose prior to the adoption of Montana's Comparative Negligence Statute, MONT. CODE ANN. § 27-1-702 (1987). However, there is no reason to believe the exception created by the Montana Supreme Court would not hold true today if the lower court found the plaintiff 51% negligent and thereby completely barred from recovery under MONT. CODE ANN. § 27-1-702 (1987).

81. MONT. CODE ANN. § 39-71-119(3) (1987).

82. MONT. CODE ANN. § 39-71-119(4) (1987).

83. *See supra* note 50 (cerebrovascular accidents and myocardial infarctions are also specifically excluded from coverage).